

**United States District Court  
for the District of Colorado**

**Public Notice  
for Appointment of New Magistrate Judge**

The Judicial Conference of the United States has authorized the appointment of a part-time United States magistrate judge for the District Court of the District of Colorado at Grand Junction, Colorado, servicing the Western Slope.

The duties of the position are demanding and wide-ranging and include the following: (1) conduct preliminary proceedings in criminal cases; (2) try and dispose misdemeanor cases; (3) conduct various pretrial matters and evidentiary proceedings on delegation from a district judge to include conducting settlement conferences; and (4) try and dispose civil cases upon consent of the litigants. **For a more detailed description of magistrate judge duties, please see the Statement of Policy regarding magistrate judge responsibilities as attached to this notice as published on the court's internet site at [www.cod.uscourts.gov](http://www.cod.uscourts.gov).** Travel to other court locations within the district may be required. The basic authority of a United States magistrate judge is specified in 28 U.S.C. 636.

To be qualified for appointment an applicant must

- (1) Be, and have been for at least five years, a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least five years (with some substitutes authorized);
- (2) Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;
- (3) Be less than seventy years old; and
- (4) Not be related to a judge of the district court.

A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the district court judges in confidence the five persons it considers best qualified. The Court will make the appointment following an FBI full-field investigation and an IRS tax check of the applicant selected by the Court for appointment.

An affirmative effort will be made to give due consideration to all qualified applicants, including women and members of minority groups. The current annual salary of the position is \$51,028. The term of office is four years with the incumbent subject to reappointment.

Application forms may be obtained from the Office of the Clerk of Court, located at 901 19<sup>th</sup> Street, Denver, Colorado or the Human Resources Division, located at 1929 Stout Street, Suite C102, Denver, Colorado. Application forms are also available on the Court's internet site at [www.cod.uscourts.gov](http://www.cod.uscourts.gov).

A completed **original application plus eight copies** must be delivered to:

U. S. District Court  
Human Resources Division  
1929 Stout Street, Suite C102  
Denver, CO 80294

**Facsimile applications will not be accepted.**

**Applications must be received no later than close of business on Friday, July 25, 2008.**

All applications will be kept confidential, unless the applicant consents to disclosure, and all applications will be examined only by members of the merit selection panel and the judges of the district court. The panel's deliberations will remain confidential.

# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

## Statement of Policy

The duties of United States magistrate judges in this district are catalogued extensively in the local civil and criminal rules. This list, however, does not establish any sort of priority among the duties, convey any sense of the importance which the court attaches to each of the various duties, afford the magistrate judges a beacon to guide their efforts, or provide the basis for developing a coherent system of standards by which the court can evaluate a magistrate judge's performance. In order to accomplish these objectives, the court has adopted this Statement of Policy, categorizing the various duties and establishing the relative importance of each category.

- 1. the authority to issue (a) administrative inspection warrants, (b) civil seizure warrants pursuant to 21 U.S.C. § 881 and 18 U.S.C. § 981, (c) search and seizure warrants for levy pursuant to the Internal Revenue Code, (d) orders authorizing the installation and use of a pen register or a trap and trace device pursuant to 18 U.S.C. §§ 3122-23 and directing the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device, and (e) search warrants, including warrants based upon oral or telephonic testimony.***

In performing these duties, the magistrate judge determines whether officials of the government should be authorized to enter upon or seize a person's property. There is no review of the decision before the initial entry or seizure, and subsequent review, if any, is deferential to the magistrate judge. The existence of a facially valid warrant frequently insulates the search from subsequent attack, even if the magistrate judge were to err in reviewing the facts or applying the pertinent legal standards. Because the magistrate judge performing these duties is adjudicating whether the government may invade rights protected by the United States Constitution, and

because the adjudication is largely unreviewed as a practical matter, the court regards these duties as among the most important performed by a magistrate judge.

2. ***the authority to make determinations and enter appropriate orders on discovery disputes in cases pending in other federal courts and the authority, upon a district judge's reference, to conduct pretrial conferences, settlement conferences, and other non-dispositive pretrial proceedings in civil cases or to handle petitions to perpetuate testimony pursuant to Fed. R. Civ. P. 27.***

The Federal Rules of Civil Procedure specify how litigants are brought into court and outline the methods by which parties can discover facts pertinent to resolution of their case. Litigants themselves bear primary responsibility for bringing all necessary parties before the court and obtaining the facts which they think the court will need in order to rule on their case, but the premise of much legislation over the past two decades, and of amendments to the Federal Rules of Civil Procedure, is that judicial passivity in the face of excessively zealous advocacy during this stage of the case can tie the case in knots, cause unacceptable expense and delay, and frustrate litigants and the public. A magistrate judge performing duties described in this section must possess the talent, temperament, and desire to actively manage and supervise litigants as they work their way through the pre-trial process, insure that the process proceeds according a schedule set after consultation with the litigants, quickly resolve disputes about the process in this or other federal courts, consult as soon as practicable with the parties to identify cases which could be settled, facilitate that settlement, and generally move pre-trial process as quickly as possible to closure. A magistrate judge's authority to hold settlement conferences is especially critical, since such conferences reflect the court's provision of the alternative dispute resolution procedures required by 28 U.S.C. § 651, *et seq.* A magistrate judge properly discharging the functions described in this section serves the primary purpose of the Federal Magistrates Act —

that court rulings, and the process by which they are made, must be speedy, efficient, and inexpensive.

3. ***the authority, in criminal cases, to accept criminal complaints and issue arrest warrants or summonses, hold preliminary hearings, conduct hearings and issue orders concerning bail, appoint counsel for persons where the Constitution or laws requires the appointment of counsel, and conduct preliminary proceedings incident to transfer cases pursuant to Fed. R. Crim. P. 20.***

A magistrate judge performing these duties, like the magistrate judge performing the duties categorized under heading number 1 above, makes decisions which implicate constitutional rights or which may deprive a person of his/her liberty. The court regards the duties discussed under this heading 3 as somewhat lower in order of importance because they are performed at the preliminary stages of a case and are transitory in the sense that they are subject to effective review by action of a grand jury or a district judge in this or another court.

4. ***the authority to make determinations and enter appropriate orders pursuant to 28 U.S.C. § 1915 with respect to any proceedings in which a request is made to proceed in forma pauperis, including the authority to develop information necessary to determine whether such cases should be summarily dismissed as legally frivolous and to make a recommendation to a district judge concerning summary dismissal.***

A large part of the court's civil docket, some one-quarter of its cases, consists of complaints or petitions of persons who want to proceed without paying the full filing fee. Only a scattered few of these are represented by counsel. The vast majority are (1) state or federal prisoners who do not have an attorney or (2) non-prisoner litigants who do not have an attorney and who assert an inability to pay the filing fee. Although these persons have the right to seek relief from the courts, experience teaches that most of them, in the end, do not have meritorious claims and that, because they are unschooled in the law, it is difficult and time-consuming to determine whether a claim has any merit. Under the court's local rules, a magistrate judge decides whether to allow

filing by the litigant without payment of the full filing fee and submits to a district judge a recommendation concerning whether the case is frivolous and subject to summary dismissal under 28 U.S.C. § 1915. To aid in making these determinations, the magistrate judge must frequently undertake a painstaking process of asking the litigant to clarify some claims in writing or informally gathering documents and information which may clarify claims poorly articulated by a *pro se* litigant. The magistrate judge adequately performing these duties plays a critical role in identifying claims which plainly have no legal merit, allowing them to be dismissed before significant resources are expending in reviewing or defending against them. This enables the court to function efficiently and inexpensively while maintaining the litigants' right to seek redress of grievances.

**5. *the civil-case authority, upon reference by a district judge, to hold hearings and make recommendations to the district judge on dispositive matters.***

Since the district judge reviews such recommendations *de novo*, without any deference to the work done by the magistrate judge, the interest in avoiding duplication of effort suggests that district judges should assign these duties sparingly. Excessive delegation of such duties may take time from other duties which the magistrate judges are expected to perform. A number of the district judges nonetheless assign these duties in *pro se* and prisoner cases on the theory that overall efficiency is improved and issues are narrowed and focused by having a magistrate judge unravel prolix or unintelligible submissions and make the initial pass at a reasoned ruling, allowing litigants to file objections, and ruling on the objections *de novo*.

**6. *the authority to preside over petty offense and misdemeanor criminal cases.***

This long-standing function dates from the time of the United States commissioner system. The court has long-recognized this authority on the theory that the court's efficiency is improved if

commissioners (now magistrate judges) handle minor federal offenses which rarely result in deprivations of a litigant's liberty.

**7. *the authority to act on post-judgment matters arising under Fed. R. Civ. P. 69 and the authority to perform judicial duties under the Federal Debt Collection Procedures Act.***

In most cases, litigants voluntarily comply with the ultimate final judgment of the federal courts. In the rare cases where they do not, one of the functions of federal district courts is to enforce those judgments. It is the court's experience that magistrate judges can efficiently and quickly handle most such matters, at no sacrifice to the principle of judicial independence, including submission of a recommendation to a district judge where the law requires one.

**8. *consent jurisdiction in civil cases.***

Since February 1, 1999, the court's local rules have authorized magistrate judges to preside over and enter final judgment in civil cases, with the consent of all parties to those cases and upon reference from a district judge. The final judgment is directly appealable to the United States Court of Appeals. An unbroken phalanx of authority from the federal courts of appeals confirms that the necessary constitutional premise for such authority is the informed and voluntary consent of the parties. The court's local rules meticulously prescribe procedures designed to insure that the consent of the litigants is informed and voluntary. Because the authority of the magistrate judge can be exercised only upon (1) the consent of the parties and (2) a reference from a district judge, the court believes that consent jurisdiction affords a means for the court to decide cases more speedily and efficiently without encroaching on the principle of judicial independence.

The court has placed the exercise of consent jurisdiction at this point in establishing a priority among magistrate judge duties for a number of related reasons. First, the process of

adjudicating a case on the merits and entering a final judgment is time-consuming, especially if it involves a jury or court trial. Time of all judicial officers is a limited resource, and the court apprehends that a greater emphasis on consent jurisdiction might interfere with other functions which a magistrate judge can perform without unanimous consent of litigants. Second, unlike every other duty which can be delegated to magistrate judges (with the arguable exception of misdemeanor and petty offense trial jurisdiction, where a litigant is tried by a magistrate judge unless there is an affirmative objection and trial before a district judge is demanded), a magistrate judge can perform these duties only upon consent of all parties. The court cannot direct or control these duties. At least in part because of this, experience over six years has shown that the duties are performed in an extremely limited number of cases. During fiscal year 2004, for example, of the 2698 civil cases filed in the court, only 41 evolved as consent jurisdiction cases — some 1.6%. Third, the court does not regard it as sound policy to attach greater importance to a set of duties which, while critical, is performed in rare cases and at some potential sacrifice to other duties which are important to the extended mission of the court. The court is better served if the magistrate judges dedicate their efforts to the central functions of the office, allowing the district judges more time to perform those duties which the vast majority of litigants expect them to discharge.

**9.     *other miscellaneous duties.***

The local rules, particularly those governing criminal cases, delegate numerous duties to the magistrate judges (*e.g.*, “conduct arraignments on indictments and informations by taking and entering not guilty pleas”). These have not been overlooked. Although the law requires that they be performed by a judicial officer, they are largely ministerial and routine, and delegation to magistrate judges simply makes more time for the district judges to do things which they must do



to serve the purposes of the court. The court does not view them as providing a framework for a system of standards for the guidance and evaluation of magistrate judges.

This policy was adopted by the U. S. District Court for the District of Colorado on the 20<sup>th</sup> day of July, 2005 and shall be effective hereafter until such time as modified or rescinded by the Court.

s/Lewis T. Babcock

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Lewis T. Babcock, Chief Judge